July 21. 1768.

ANSWERS

FOR

John Campbell, Writer in *Stirling*,

TO

The PETITION of Messf. *Haig*, *Daes*, and Company, Merchants in *Alloa*.

IN the Beginning of the Year 1767, the Petitioners brought a Process, at their Instance, before the Admiral-substitute of *Alloa*, against *John Christie*, Gunsmith in *Stirling*, and *John Campbell*, the Respondent, Writer there, libelling, "That where the said Defenders are, jointly "and severally, justly addebted and resting to the Pursuers "*L.* 6 : 2 : 3 *Sterling*, for Wood furnished by the Pur-"suers to them the said Defenders, who were at the "Time in a Company-trade together, upon the 28th *Sep-"tember*, and 15th Day of *October* 1762."

The Respondent, Mr *Campbell*, had no sort of Concern with this Wood, and knew nothing about any such Demand, founded upon an Account upwards of five Years old: And he shall fairly own, that he could not help being offended at the Pursuers pretending to call him before an incompetent Court, at a Distance, when, in the Town of *Stirling*,

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where he lived, he might have been called, either before the Sheriff, or the Burrow-Court: To either of whose Jurisdictions he was subject, and where no Objection could have lien to the Jurisdiction; and the Matter might have been determined very quickly, and at very little Expence.

The Respondent could not help thinking, that the Pursuers Views in this Matter were twofold: The Judge was Father-in-Law to one of the Partners; and besides, as the old Perquisite of Sentence-money still prevails in these Courts, there was a particular *Commodum* to the Judge himself, in bringing Processes before him.

The Respondent had indeed frequently observed Matters of this Sort going on, and poor People harassed, by being carried at a Distance from their Dwellings, and from the very Place where the Judge-ordinary of the County, the Sheriff-court sat, to attend upon these petty Courts; and which the Respondent could not help considering as a Wrong, and an Act of Usurpation in these Admiral-substitutes, in assuming a Power and Jurisdiction which they were no wise intitled to in Law. He therefore was resolved, not to submit to any such Pretension; and he imagined, that in proponing a Declinature, the Judge would not have been so hardy as to have proceeded. And accordingly, your Lordships see, from Part of the Proceedings stated in the Petition, that the Respondent declined the Judge, not only on account of a total want of Jurisdiction, but also on account of near Connection and Relation in which the Judge stood to that Company.

The Petitioners have furnished your Lordships with the Defences and Answers before the Admiral, Replies to these Answers were given in by the Respondent; in which he contended, That "no Cause can be called maritime, or "competent before the Admiral, except what relates to Ven-"dition, or freighting of Ships, Differences between Masters "and Seamen, Masters and Owners, Masters and Freighters, "Bills of Bottomry, and the like, in Terms of the Act of "Parliament

" Parliament 1681; therefore to pretend that the present Pro-
" cess is a maritime Cause, is a Jest."

To this the Petitioners made Duplies, wherein they do not seem to maintain, that the Judge had any Jurisdiction but in maritime Matters; but then they urge, that the Cause in Issue was a maritime Cause. Their Plea on this Point is in the following Words, " The Pursuers apprehend, the De-
" fender will, in the Event, find, there is no Jest *in affirming,*
" *as they still do, that this Process is a maritime Cause.* He
" has indeed given a Detail of several Causes that no doubt
" are maritime, and competent before the Admiral, but he has
" omitted others, and among the rest, such as the pre-
" sent."

However, the Admiral-substitute, by the Decision he gave in the Matter, taught the Parties, that it was needless to debate, whether the Question was maritime or mercantile; for that he was Judge competent in both; and that this Process was in its Nature mercantile, between Merchant and Merchant; and that the Goods had been imported from a foreign Country by Water.

The Respondent having raised Advocation of this Process, it came to be determined by Lord *Auchinleck*, as Ordinary in the Outer-house, who dismissed the Process, and found the Pursuers liable in Expences. They represented; and, after Answers, his Lordship took the Cause to report, and ordered Informations. The Respondent had no View, as the Petitioners say, to settle a curious Point in Law; for, till after the Respondent had prepared his Information, in Obedience to the Order of the Lord Ordinary, did he understand from the Petitioners, that they were to desert their Cause: And had they, even then, offered to compound the Expences, the Respondent should very willingly have had no further Dispute. And he cannot help here observing, that through this Conduct of the Petitioners, in deserting their Cause at one Time, and pushing it at another, he is put to more than ordinary Expence: For had the

Petitioners

Petitioners instructed their Counsel, to have drawn an Information as ordered, all the learned Arguments in this Petition would have been considered, when the Cause was determined by the Court; and the Respondent would not now have been put to the Expence of an Answer.

But with respect to the Question as to the Admiral's Jurisdiction, and, notwithstanding the ingenious Arguments used in the Petition, the Respondent apprehends, the Decision of the Court in this Matter is founded on certain Principles of Law: For the whole Tendency of the Petition seems only calculated to start Doubts and Difficulties; but no Rule, either from our own, or the Laws of neighbouring Countries, is pointed out as Principles, or as tending to give any Light into the Nature of this Jurisdiction.

The Respondent, therefore, that he may give all the Aid in his Power to the Court in determining this Point, will endeavour to trace this Matter from its Source, and only take notice of some Arguments used in the Petition, as they happen to occur.

Without having Recourse to the Aids of History, it is obvious from common Reason, that every Nation of the World, before they became civilized, and before they had formed Connections, and became united by Blood and Commerce, so as to chuse a King, or one common Ruler, must have been governed by the Heads of Families, or by Chieftans, or Heads of Tribes or Clans, who acted in the double Capacity of General and Magistrate.

Then, the common Dictates or Laws of Nature, with the arbitrary Notions of Equity of the Chieftan, must have been all the Law that prevailed, and which, from certain Connections and Prejudices, could not fail to produce the most horrid Scenes of Oppression and Injustice.

But when larger Societies or Kingdoms became united under one common Head, or Magistrate, and a regular System of Laws came to be formed, the very next Step fell to be, to appoint Judges to carry these Laws into Execution.

It

It is natural to think, that in appointing these Judges in extensive Societies, the Legislator would appoint certain Boundaries, so as Dispatch might be given to the Leiges; and also certain Causes to particular Judges, that they might be learned and expert in these Matters; under which comes the two cardinal Points that form what we call Jurisdiction.

Before Nations became thus civilized, it is impossible that the Word *Court* could be known among them; at least, there could be no such thing as Courts of different Denominations. As the Chieftan was the sole Magistrate, and no different Branches or Departments in these little States; therefore so soon as Courts came to have different Denominations, this must be the evident Effects of civil Policy, and legislative Authority.

For the Respondent cannot conceive, nor does he well understand, what is meant by the Pursuers, when they say, That "they consider the Courts of Admiralty as deriving "their Jurisdiction from the common Law alone, which is "to be gathered from Practice and Consuetude." This is in other Words saying, that the Legislator appointed certain Judges, under different Denominations, without any sort of Meaning; that they were not appointed for any particular Branch or Department in the State, but were just scattered throughout the Kingdom, and allowed to scramble for Jurisdiction to themselves; and what they could possibly gain this Way, was all their own.

But if this can be said of the Court of Admiralty, why not say the same thing of every Court in *Britain*, because the Admiral's Powers and Jurisdiction with respect to Causes, is as strongly and clearly defined by the Law, as will be shown in the Sequel, as any other Court in *Europe*: And though it were admitted, that on many Occasions the Admiral hath overstaped his Bounds, that can only be considered as an Act of Usurpation, but can never confer any Right.

For the Respondent humbly apprehends, that it is repugnant to Principles, to say, That Jurisdiction can be acquired by any Court, which was not conferred upon that Court at its Institution, and this in different Respects, in so far as concerns the Granter, the Grantee, and the Persons over whom the Grant is considered to extend.

If it shall appear, that the Powers of the Court of Admiralty, by the Institution of Law, was appointed for a certain Purpose, and with certain definite Powers or Jurisdiction; the Respondent hath been taught, that no Extention of that Right from Consuetude or Prescription, can possibly ever be objected against the Crown, from whom the Right is derived.

Nor, 2*dly*, If the Jurisdiction is accurately defined by Law, neither could the Admiral, however extensively he may have exercised it, be benefited; nor the Leiges, though they may in some Instances have submitted to this Jurisdiction, be any ways hurt, when their different Privileges come to be tried: For it is an established Rule in Law, that no Person can acquire a Right beyond the Tenour or Words of his own Title under which he claims. A Person having a Bounding Charter of Lands, accurately defining the Extent of his Territory, by certain Boundaries and Land-marks; though he may have possessed Lands beyond these Boundaries immemorially, yet this will never confer a Right; and the Proprietor of the next Tenement contiguous to this Boundary, will be presumed the lawful Proprietor of these Lands, and intitled to claim his March, conform to the Boundaries specified in the Title-deeds of his Neighbour: And here Possession is of no Avail, because no Person can contradict the Title upon which his Right is founded: And all such Acts of Possession beyond that Boundary, are justly presumed no more but mere Acts of Encroachment and Intrusion.

If it is so in private Property, *multo magis* ought this Rule to prevail in Matters of public Law, where an Encroachment

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is evidently made upon the Privileges of Government, and the Rights of the Subjects in general, in Contradiction to the Law, and the Title upon which it is founded.

The Respondent can very well imagine, that local Customs arising from immemorial Use, and the tacit Consent of all concerned, may justly be considered to have the same Effect, as Laws among Persons where these Customs universally prevailed: But the Title of Jurisdiction stands upon a quite different Footing; it is a special and particular Grant, conferred by express Law: And however some Persons may have submitted to the Usurpation, yet this can never be called a general Use, where perhaps one of a thousand was never concerned in the Matter; and when, as has been said, any Encroachments thus made, was not only without any Title, but contrary to the very Tenour of that Right by which that Jurisdiction was exerced.

The Petitioners say, that Courts of Admiralty, though Creatures of the municipal Law of this Country, yet positive Law is by no Means the sole Guide of their Judgment; for "as their primary Object is maritime Affairs, so they are "truly *a Court of the Law of Nations*; such Affairs naturally "involving the Concerns of Foreigners, as well as of *Scotsmen*, and therefore falling to be regulated, not by the Law "of *Scotland*, or any particular Country alone, but by general Rules common to all."

The Petitioners lay down this Position, taking it for granted, that Courts of Admiralty through all civilized Nations, have always been in use to determine in Causes such as the present; for that it is difficult to determine between such as are mercantile and maritime. But the Respondent does even deny this Fact, and he hopes to show indisputably, that so far as he hath Access to learn, the Powers of Admiral-courts are very limited, both by Law and Practice; and that the Doctrine which the Respondent now maintains, is agreeable to the established Laws, both in *England* and *Scotland*, and in

in other Countries, as laid down by the oldeſt Writers upon our Law.

The Reſpondent is informed, that inſtead of any ſuch general Practice prevailing in *Scotland*, as the Court of Admiralty to take upon them *in foro litigioſo* to judge in Matters not ſtrictly maritime; the very reverſe is the Caſe, and that in the high Court of Admiralty, the Judge either upon obſerving that the Nature of the Action does not fall properly under his Juriſdiction, or upon a Declinator being offered, does always decline himſelf, and ſuſtain the Defence, ſo as to diſmiſs the Proceſs.

But though the high Court of Admiralty could, or had even acquired an Enlargement of their Juriſdiction, by immemorial Uſe and Cuſtom; yet that would not apply, nor veſt the ſame Powers in every Subſtitute planted in different Corners of the Nation, becauſe a Right eſtabliſhed by Uſe, can never be extended farther than that Uſe and Cuſtom went: Beſides, from the very Commiſſion granted to this Subſtitute, he has no Title to found upon any Right which the high Court of Admiralty may have acquired; ſeeing from the Inſpection of his Commiſſion, as recorded in the Books of Admiralty, it appears, that his Power of judging is ſpecially limited to certain Bounds, and to ſuch Cauſes as "ſhall be intented before him, *conform to the Laws of Scotland*."

But the Reſpondent will now proceed, and point out to the Court, what this Juriſdiction of Admiralty is, according as underſtood by the Writers upon the Law, and from the ſeveral Acts of Parliament and Deciſions relative thereto, both in *England* and *Scotland*.

And, *1ſt*, With reſpect to *England*, it appears, that Complaints had been made in *England*, as well as we ſee was done in *Scotland*, of theſe Courts of Admiralty, that they aſſumed a Juriſdiction which they had no Title to, and incroached upon the Rights and Liberties of the Leiges; for Remeid

meid of which, there appears an Act of Parliament made as far back as 1389, to ascertain the Admiral's Jurisdiction; and it is intitled, "With what Things only the Admiral "and his Deputy shall meddle." The Statute runs thus, "Forasmuch as a great and common Clamour and Com- "plaint hath been oftentimes made before this Time, and "yet is, for that the Admirals and their Deputies, hold "their Sessions within divers Places of this Realm, as well "within Franchise, as without, *accroaching to them greater* "*Authority than belongeth to their Office*, in prejudice of our "Lord the King, and *the common Law of the Realm*, and in "diminishing of divers Franchises, and in destruction and "impoverishing of the common People: It is accorded and "assented, that the Admirals and their Deputies, shall not "*meddle* from henceforth *of any thing done within the Realm*, "*but only of a thing done upon the Sea, as it hath been used in* "the Time of the noble Prince King *Edward*, Grandfather "to the present King that now is."

Anno 13*tio* Rich. II. cap. 5.

And by an after Statute in the Year 1391, in the Reign of the same King, made to determine, "in what Places the Ad- "miral's Jurisdiction doth lie." The Act proceeds thus, "At the great and grievous Complaint of all the Commons, "made to our Lord the King, in this present Parliament, "for that the Admirals and their Deputies do *encroach* to "themselves *divers Jurisdictions*, Franchises, and many o- "ther Profits pertaining to our Lord the King, and to other "Lords, Cities, and Burrows, besides these they were wont "or ought to have of Right, to the great Oppression and Im- "poverishment of all the Commons of the Land, and "Hindrance and Loss of the King's Profits, and of many o- "ther Lords, Cities, and Burghs through the Realm: It "is declared, ordained, and established, that of all Manner of "Contracts, Pleas, and Quarrels, and of all other things "done, rising within the Bodies of Counties, *as well by Land* "*as by Water*, and also Wreck of the Sea, the Admiral's

Anno 15*to* Rich. II. cap. 3.

" Court shall have no Manner of Cognisance, Power, nor
" Jurisdiction; but all such Manner of Contracts, Pleas,
" and Quarrels, and all other things, rising within the Bo-
" dies of Counties, as well by Land as by Water, as afore;
" and also Wreck of the Sea, shall be tried, determined,
" discussed, and remedied by the Laws of the Land, and
" not before, nor by the Admiral, nor his Lieutenant in
" any ways. Nevertheless, of the Death of a Man, and of a
" Maihem done in great Ships, being and hovering in the
" main Stream of great Rivers, *only beneath the Bridge of the*
" *same Rivers* nigh to the Sea, and in none other Places of
" the same Rivers, the Admiral shall have Cognisance; and
" also to arrest Ships in the great Floats, for the great
" Voyages of the King and of the Realm; saving always to
" the King, all Manner of Forfeitures and Profits thereof
" coming: And he shall have also Jurisdiction upon said
" Floats during the said Voyages, only saving always to the
" Lords, Cities, and Burrows, their Liberties and Fran-
" chises."

Anno 2. Hen. IV. cap. 11.

And, by a Statute made in the Reign of *Henry* IV. in the Year 1400, intitled, " A Remedy for him who is wrong-
" fully pursued in the Court of Admiralty;" it is declared,
" Whereas, in the Statute made at *Westminster*, the 13th
" Year of the said King *Richard*, amongst other Things it is
" contained, that the Admirals and their Deputies shall not
" intermeddle from thenceforth of any thing done within
" the Realm, *but only of a Thing done upon the Sea*, according
" as it hath been duly used in the Time of the noble King
" *Edward*, Grandfather to the said King *Richard*: Our
" said Lord the King willeth and granteth, that the said Sta-
" tute be firmly holden and kept, and put in due Execu-
" tion; and moreover, the same our Lord the King, by the
" Advice and Assent of Lords spiritual and temporal, and
" at the Prayer of the said Commons, hath ordained and
" stablished, that as touching a Pain to be set upon the

" Admiral

" Admiral or his Lieutenant, *that the Statute and common Law* " *be holden against them*, and that he that feeleth himself " grieved against the Form of the said Statute, shall have " his Action by Writ grounded upon the Case, *against him* " *that doth so pursue in the Admiral's Court, and recover his* " *double Damages against the Pursuant; and the same Pursuant* " *shall incur the Pain of ten Pound to the King for the Pursuit* " *so made, if he be attainted.*"

This Office of Lord High-Admiral of *England* was afterwards vested in Commissioners of Admiralty, with the same Jurisdictions and Powers as was formerly competent to the Lord High-Admiral; and it is so specially fixed by an Act in the Reign of King *William* and Queen *Mary*. So that the Jurisdiction of the Admiral-Court has always been, and at this Day stands according as fixed by the above Statutes; whereby it is clear, that the Admiral hath no sort of Power or Jurisdiction, but in certain Matters perfectly *maritime*. The Law there seems very jealously to have guarded against his Usurpations, and to have secured the same under Pains and Penalties.

Anno 2. Gul. et Mar. Sess. 2. cap. 2.

The Respondent does not pretend to be much versed in the Precedents of the *English* Courts, or to have Leisure to search through their voluminous Reports for Decisions; but upon looking into *Giles Jacob*'s Law Dictionary, *voce* Admiral, we there find sundry Cases abridged, taken from the Reports of their Courts of Law, some of which the Respondent will beg Leave to insert, as there taken down for the Perusal of the Court.

" The Admiralty has Cognisance of the Death or Maim " of a Person committed in any Ship or Vessel *riding in great* " *Rivers, beneath the Bridges thereof next the Sea*; though, by " the common Law, if one be killed upon an Arm of the " Sea, *where Land can be seen on both Sides*, the Coroner is to " make Inquiry of it, and not the Admiral, for there the " County may take Cognisance of the Matter; *and where a*

" *County*

" *County may inquire, the Lord-Admiral hath no Jurisdiction.*
" 3 Rep. 107."

" *The Admiralty hath Jurisdiction where common Law can*
" *give no Remedy; and all maritime Causes arising wholly upon*
" *the Sea, that Court hath Cognisance of.* It likewise has Ju-
" risdiction in Matters of Freight, Mariners Wages, or
" Breach of Charter-Parties, though made within the King-
" dom, provided the Penalty be not demanded; as also in
" the Case of building, mending, saving, and victualling of
" Ships, *&c.* so as the Suit be *against the Ship*, and not only
" against the *Party*. 6 Rep. 2 Cro. 216."

" But if any Contract be made beyond the Seas, for doing
" of an Act, or Payment of Money in this Kingdom; or the
" Contract is upon the Sea, *and not for a marine Cause*, it is
" to be tried by a Jury at the common Law; and Contracts
" made abroad may be determined in the Court of King's
" Bench; and a Fact laid to be done in any Place in *England*,
" and so tried there. 2 *Bulst.* 322."

" If a Bond is made and delivered in *France*, the Party
" may sue it either in the Admiralty, or at common Law;
" *though an Obligation made at Sea*, it has been held, cannot
" be sued in the Admiral's Court; because it takes its Course,
" and binds according to the common Law. 4 *Leon.* 257.
" *Hob.* 11."

" Also it hath been adjudged, that the Court of Admiral-
" ty cannot hold Plea of a Matter *even concerning what be-*
" *longs to Ships*, which arises from a Contract upon the
" Land, though they may for Seamens Wages, *&c.* which
" become due for Labour done upon the Sea, and the Con-
" tract at Land is but to ascertain them. 3 *Lev.* 60. *Hob.*
" 79."

" The Master of a Ship contracts on the Credit of the
" Owners, and not of the Ship; for which Reason he can-
" not prosecute in the Admiralty for his Wages. 1 *Salk*
" 33."

" If

" If Sailors Cloaths are bought in the Parish of St *Katharine's*, near the Tower of *London*, which are delivered in " the Ship, no Suit lies in the Court of Admiralty for the " Money: And a Contract made on the Land in *New-England*, was discharged, being out of the Admiralty-Jurisdiction. *Owen* 122. 3 *Cro.* 603."

Thus far as to the Jurisdiction of the Admiral in *England*. And as the Province of this Court appears to have been for the same Ends and Purposes in *Scotland* as *England*, the Institution of the Lord High-Admiral and his Court must undoubtedly have been the very same; and accordingly all our Lawyers consider the Court of Admiralty as specially appointed for *maritime* and *sea-faring* Causes: And though formerly, when our Commerce and Navigation was not very extensive, and the Office of the Lord High-Admiral not much attended to in private Matters, yet *President Balfour* takes Notice of certain Laws respecting the Admiral's Jurisdiction, and the Powers competent to him, which do seem all to agree in a great Measure with these conferred on the Lord High-Admiral of *England* by the Statutes above recited; and after we came to be more nearly connected with *England* in the Time of *Charles* II. and when the Act 1681 was introduced into our Law, which, as hereafter will fall to be more fully explained, was modelling the Admiral's Powers and Jurisdiction in every respect similar to that of *England*.

We learn from an eminent Lawyer, in his History of Courts, that even in seafaring Causes, the Lords of Session had a cumulative Jurisdiction with the Admiral in these Matters: But " where a maritime Cause was brought before the " Session at the first Instance, the Judge of the Admiral-" Court took his Place among the Lords of Session, and vo-" ted with them." And in Evidence of this, a Decision in the 1543 is appealed to.

Sir *James Balfour* also mentions a Case, as supposing one Stranger to take a Ship and Goods belonging to another, and Fol 694. Sect. 1.

ſhould bring the ſame into any of the Ports of *Scotland*; and that if the Owner of the Ship ſhall alledge, that ſhe is not a lawful Prize, "the Lords of Council are not competent "Judges in this Matter; bot the ſamin ſould be decidit be- "foir the Admiral and his Deputis, becauſe the ſamen is an "Actioun of Weirfare; *nevertheles, gif the Mater be difficile* "*or weichtie, the Lordis may adjain an certane of thair Nom-* "*bre to be Aſſeſſouris to the Admiral and his Deputis.* 9 *No-* "*vemb.* 1542. *Antonie Delatour* contra *Criſtian Martin.* 1. *ſ.* "*c.* 555."

Yet the ſame Author, who appears to have collected all the Laws and Deciſions relative to the Admiral's Office and Juriſdiction before his own Time, ſeems to lay it down from Statute, that the Admiral even then had an excluſive Juriſdiction in ſeafaring Cauſes.

Fol. 629. cap. 83. "It is ſtatute and ordainit, that the Admiral ſall be and "remane general Lieutenant to the King's Grace, of all Ar- "mies or Companies of Men of Weir that ſall be collectit "and reikit to the Sea; and be reſſoun of his Office of Ad- "miraltie, ſall have Cognitioun, Juriſdictioun, and Deci- "ſioun of all Actiounis, Querrelis, or Contraverſies; of all "Crimes, Faultis, and Treſpaſſis, committit als weill in "Time of Weir, and be the Occaſioun of the ſamin, as al- "ſwa for the Effairis of Merchandice and Fiſching, and for "utheris Thingis quhatſumever *happenand in the Sea, or in* "*the Portis of the ſamin, and in the Iſlis thairto adjacent, or* "*in the Coaſtis thairof, ſwa far as the Sea-flude ebbis or flowis;* "and alſwa of all Contractis maid and expede for the Effairis "of Weir, and of Fiſching and Merchandice, tuiching the "carrying, louſing, *and away taking of Merchandice be Sea,* "or uther Thingis in the Effairis of Navigatioun; *and that* "*na uther Judge nor Judges within this Realme ſall exerce or* "*uſe the ſaid Juriſdictioun, bot the Admiral or his Deputis al-* "*lenarlie.*" Act I. art. 52."

From

From the whole of the Laws and Decisions pointed out by this learned Author, relative to the Admiral's Powers and Jurisdiction, it is evident, that the Admiral never pretended to judge in any Matter that was not of a maritime Nature, and purely belonged to shipping; for in the whole of the Questions that seem ever to have occurred, there is not one that relates to a common Action of Debt for inland Consumption between Merchant and Merchant.

Thus it appears, that the Admiral's Jurisdiction both in *England* and *Scotland* was solely confined to maritime Affairs; and that he had no cumulative Jurisdiction in any other Matters but seafaring Causes only: For your Lordships see, that even with respect to these, the Court of Session had a cumulative Jurisdiction with the High Admiral of *Scotland* down to the 1681. But the Respondent, with Submission, maintains, that, previous to that Period, there does not appear, either from the Law instituting the Admiral's Jurisdiction, or from any Precedent or Decision, that ever the Admiral assumed a Power of judging in any Matter whatever that was not purely maritime, or that he ever pretended to have a cumulative Jurisdiction with any other Judge whatever, excepting in these Matters.

From what has been said, and from the History of the Nature and Proceedings of this Court of Admiralty, the Tendency and Intention of the Act 1681 will clearly appear to the Court. For we see, that although according to the ancient Law, the Admiral is said to have had a privative Jurisdiction, with respect to Shipping and seafaring Matters; yet, that your Lordships Predecessors used even to determine in these Matters, in conjunction with the Admiral; or to appoint Assessors to him in Matters difficult and of Importance. So that the Respondent humbly apprehends, he is intitled upon solid Grounds, to assume the Position formerly laid down in his Information to the Court, that the Act

1681 is by way of bounding Charter to the Admiral's Jurisdiction, and the only Rule by which it can be fixed.

For it will be observed by the Court, that the Practice had gone contrary to the Law, as laid down by President *Balfour*; and the Admiral appears to have had no privative Jurisdiction whatever. So that in order to restore the ancient Law, and to put an End to Disputes that possibly occurred, where the Practice went contrary to the Law, was the Act 1681 evidently introduced; and which appears from the very Narrative of the Act: "Considering that the *clearing* "and *establishing* the Jurisdiction of the High-Admiral, will "greatly tend to the Advancement and Encouragement of "Trade and Navigation: And in the End, it casses, annuls, "and rescinds all whatsoever Laws, Acts of Parliament, or "*Customs*, contrary to, or any ways inconsistent with this "present Act."

This Act, therefore, was for *clearing* and *establishing* the Admiral's Jurisdiction; or, in other Words, it was to be an Act declaratory of the Powers and Jurisdiction of the Lord High-Admiral, and which he was to exerce in the precise Terms, as specified in that Act. And here we see, that his privative Jurisdiction was restored, and the same Powers bestowed upon him, which the Lords High-Admirals of *England* enjoyed by the Laws of that Country, and in Terms of the Statute 1391, of *Richard* the II. above recited.

For by the Statute 1681, it is declared, "That the said "High-Admiral, as he is his Majesty's Leive-tenant and "justice-general upon the Seas, and in all Ports, Harbours, "or Creeks of the same; and upon fresh Waters, *or navigable Rivers, below the first Bridges, & within the Flood-marks*, so far as the same does, or can at any Time extend: So the said High-Admiral *hath the sole Privilege and Jurisdiction, in all maritime and seafaring Causes*, foreign "and domestic, whether civil or criminal whatsoever, within "in this Realm, and over all Persons as they are concerned

"in

" in the same: *and prohibits and discharges all other Judges* " *to meddle with the Decision of any of the said Causes, in the* " *first Instance, except the Great-Admiral and his Deputes alla-* " *nably.*"

It is said for the Petitioners, That " this Statute was only " meaned to ascertain the privative Jurisdiction of the Courts " of Admiralty, but by no means to define the cumulative " Jurisdiction of that Court, which rests, and always hath " been exercised upon the Footing of the common Law a- " lone."

But in the *first* place, this is plainly a *Petitio principii*, because the Respondent apprehends he hath shewn from the old Law, and from the Laws of *England*, that the sole Intention of the Legislator in instituting Admiral-courts, was for the Purpose of taking Care of Matters that related to Shipping, and for no other Purpose whatever. The Petitioners have not pretended to shew, either from the Authority of Law or Precedent, that, previous to the 1681, the Admiral either had, *or even did exerce one Act of cumulative Jurisdiction*, with any other Judge in *Scotland*, excepting in those Matters, which from the very Nature and Institution of his Court, belonged to his own Department.

But, *adly*, It will be observed, that the Act 1681, is an Act purely *declaratory* of the Admiral's Powers and Jurisdiction. For, in original Laws, his Majesty *statutes* and *ordains*; but in the Act 1681, it is made for *clearing* and *establishing* the Admiral's Jurisdiction; and there his Majesty *decerns and declares*, that the High-Court of Admiralty was vested with the Powers and Jurisdiction above set forth. So that as this Act was obviously intended for restoring the old Law, with respect to the Admiral's Jurisdiction, which had been in a great Measure obliterated; therefore, agreeable to the general Rule observed in every Declarator, the Act particularly specifies the Nature and Extent of the Admiral's Jurisdiction, and how it was to be exerced in all Time coming. And the

Respondent cannot consider this declaratory Act, any ways different from a new Institution made of the Lord High Admiral, and as if commencing at that very Period.

If this is so, and if it shall appear that the Powers of the High-Admiral are here clearly defined and established by Law, whatever the Practice of the Admiral Courts may have been since that Period, the Respondent apprehends, that no Acts of Encroachment or Usurpation whatever, can possibly extend those Powers; nor is it either in the Power of Judges to create Jurisdiction to themselves, or of the Lieges to confer it by any tacit Acquiescence.

But so far as the Respondent can learn, even the Judge of the High Court of Admiralty will not take upon him to judge in any Matter that is not maritime, when his Jurisdiction is declined. And your Lordships see, as set forth in the Petition, that in the present Question before his Substitute in *Allos*, the Respondent only begged, that he might have the Judgment of the Admiral depute on the Dispute; but the Substitute, as he himself was quite clear in the Question, would not allow his Friends the Petitioners, to be put to this Trouble.

It may be very true, that these Admiral-substitutes do take upon them to determine in all Causes that Parties chuse to bring before them; and they have a manifest Interest to do so, for they have no Salary, but merely what they can gather for a certain Proportion of Sentence money; and perhaps it may be true, that many poor People have yielded Obedience to such Decrees. But no later than the 1759, in the Case *Millar contra Sawers*, your Lordships had a Suspension from the Admiral-substitute of that very District of *Allos*, where a Merchant was pursuing a Shoemaker for the Price of Leather sold to him, just such a maritime Question as the present, and as expressed in the Decision in the late Faculty Collection: "It appeared to the Court a *Novelty*, for an Ad-"miral-depute to determine *in foro contentioso* between Persons

" residing

"residing at a Distance from the Sea, *and in a Question not ma-*
"*ritime.*" They therefore sisted Process, and granted War-
"rant for citing the Admiral-depute, and his Constituent,
"to appear in Court, and to answer to such Questions as
"should be put to them."

This Matter, the Charger and Admiral-depute endeavoured to put off as gently as possible. It was acknowledged, that the Suspender did not live within the Jurisdiction of the Admiral-substitute, so no further Inquiry was made into the Matter. But the Letters were simpliciter suspended, and full Expences awarded against the Charger. This was surely a sufficient Caution for these Admiral-substitutes, not to assume a Jurisdiction which they were not intitled to by Law. And if it appeared to the Court a *Novelty* in the 1759, the Respondent cannot apprehend that the Practice since that Time will be considered as of very long Use or Custom. But the Respondent considers this Decision, which was well known to all the People residing in these Parts, as of pretty singular Use, as to the Question of Expences in this Matter; For both the Judges of that Court, and the whole Country, were in a Manner warned of their Danger, by this Check given in the 1759. And they were put in *pessima fide*, either to determine upon, or to bring Processes before an incompetent Court.

With respect to the Question of Expences, the Respondent shall say very little; but if he was right in his Defences before the Admiral-substitute, and if that Court was not intitled to judge upon this Matter when declined, he humbly apprehends, it would be the hardest Case imaginable, not to allow him the full Expences, which he hath been led to incur, through the wrong and illegal Act of the Petitioners.

The Petitioners say, they have brought a Process against the Respondent before your Lordships, for Payment of this Debt. But there they will meet with a Defence in *causa*, and where the Respondent also does not doubt to be absolved, and get his

Expences.

Expences. But if in the present Case he hath been harassed before an incompetent Court, and like a good Subject he hath endeavoured to support the Laws and Constitution of his Country, against Encroachment and Usurpation, he humbly apprehends that in Law and Justice, he is intitled to have full Indemnification.

The Respondent is sorry, that he should have been obliged to trouble your Lordships at such Length, in a Cause, that with respect to its pecuniary Interest, is of very small Consideration: But he humbly hopes that he hath satisfied the Court, that the Court of Admiralty was solely instituted for maritime Affairs; and that since the earliest Days of that Court down to the 1681, it does not appear that ever they assumed a cumulative Jurisdiction with any other Court in *Scotland*, excepting in seafaring Causes. What Practice possibly may have prevailed in some Instances, since that Period, cannot so certainly be said, as few or no Disputes seem to have occurred anent it. But sure the Law will speak for itself, and the Act 1681 will clearly shew the full Extent of their Jurisdiction, which the Respondent apprehends is confined to seafaring Causes alone, and that their Jurisdiction may be determined from this simple Proposition; Was such a Cause competent to come before your Lordships, or any of the inferior Courts of *Scotland*, in the first Instance; if it was competent, it did not belong to the Admiral-jurisdiction; because whatever is competent to him in the first Instance, all other Judges in *Scotland*, by the Statute 1681, are expressly prohibited and discharged from meddling with.

The Respondent therefore apprehends, that the Admiral hath no cumulative Jurisdiction whatever; and that his Decrees in Causes not belonging to him, are *ipso jure* void and null. But in any View it cannot be disputed, that his Jurisdiction in incompetent Causes might be declined, which is all that is necessary for the Respondent's Argument: For as your Lordships see, the Respondent very strongly declined the Court, both

both on account of the Connection of the Judge with the Purſuers, and the Incompetency of the Cauſe, and only craved the Admiral-depute's Judgment upon the Defence. The Reſpondent had good Reaſon to propone this Defence; he was called from the Seat of Juſtice in the County, to attend upon an incompetent Court; on the other hand, the Purſuers, fully ſenſible that the Admiral had no Juriſdiction, but in maritime Cauſes, did maintain before him, that this was a maritime Cauſe, and that he was Judge competent; and the ſame Plea indeed ſeems in a good Meaſure to have been maintained in this Court. By all which this Proceſs has been brought the Length that it is now come; and through which the Reſpondent has incurred very conſiderable Expence; and he humbly hopes, that the Interlocutor of the Court will not only be adhered to; but alſo that he will be found intitled to what further Expence he hath incurred anent this Matter.

In reſpect whereof, &c.

D. ARMSTRONG.